

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

DANIEL MOORE, )  
Plaintiff, )  
v. )  
MARTIN O'MALLEY,<sup>1</sup> )  
Commissioner of Social Security, )  
Defendant. )  
No. 1:23-CV-98 RLW

## **MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff's application for an award of attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (d)(1)(B). (ECF No. 19). The Commissioner does not object to the request for attorney's fees but asserts that the amount should be payable to Plaintiff.

## *Background*

On June 6, 2023, Plaintiff Daniel Moore filed the above-captioned cause of action challenging the denial of his application for disability insurance benefits under Title II and Supplemental Security Income (SSI) under Title XVI of the Social Security Act. On December 11, 2023, Defendant moved that the Court reverse the decision of the Administrative Law Judge (ALJ) and remand this action to Commissioner pursuant to sentence four of section 205(g), 42 U.S.C. § 405(g). The Court granted Defendant's request and reversed and remanded the decision

<sup>1</sup>Martin O’Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O’Malley should be substituted, therefore, for Kilolo Kijakazi as the defendant in this suit.

of the Commissioner. (ECF No. 17). Following the order of remand, Plaintiff's counsel filed the present application for attorney's fees.

Plaintiff seeks attorney's fees for 27.1 hours of work done by attorney Kristen N. Van Fossan at rates ranging from \$244.16 to \$246.51 per hour. The total amount of fees sought by Plaintiff is Six Thousand Six Hundred Seventy-Six Dollars and Forty-Two Cents (\$6,676.42). Defendant responded to Plaintiff's motion and did not oppose Plaintiff's request, although Defendant argues that the amount should be payable to Plaintiff, not her attorney.

### ***Discussion***

The Court finds the award of fees is proper in this case. Section 2412 of the Equal Access to Justice Act (EAJA) provides that a court:

shall award to a prevailing party . . . fees . . . incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). A plaintiff's attorney is entitled to fees if (i) plaintiff was the prevailing party, (ii) the fees were "incurred by that party in [the] civil action" in which the party prevailed, and (iii) the defendant's position was not substantially justified. Id. Plaintiff has met all of these requirements in the instant matter. Shalala v. Schaefer, 509 U.S. 292, 302 (1993) ("a party who wins a sentence-four remand order is a prevailing party.") The Court, therefore, will award Plaintiff fees in the amount of Six Thousand Six Hundred Seventy-Six Dollars and Forty-Two Cents (\$6,676.42). The award, however, shall be made payable to Plaintiff Daniel Moore. See Astrue v. Ratliff, 560 U.S. 586, 593 (2010) "[the statute] 'awards' the fees to the litigant").

Accordingly,

**IT IS HEREBY ORDERED** that the Clerk shall substitute Martin O'Malley, the Commissioner of Social Security, for Kilolo Kijakazi, former acting Commissioner of Social Security, as the defendant in this cause of action pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

**IT IS FURTHER ORDERED** that Plaintiff's motion for attorney's fees is **GRANTED**.

[ECF No. 19]

**IT IS FURTHER ORDERED** that Plaintiff is awarded attorney's fees in the amount of Six Thousand Six Hundred Seventy-Six Dollars and Forty-Two Cents (\$6,676.42). The award shall be made payable to Daniel Moore.



RONNIE L. WHITE  
UNITED STATES DISTRICT JUDGE

Dated this 17th day of June, 2024.